39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–83–AD.

Applicability: Model 747SP series airplanes equipped with BFGoodrich evacuation systems identified in BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of passengers to exit the airplane through Door 2 in the event of an emergency evacuation, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the escape slide/raft on Door 2 in accordance with BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19775 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Requirements for Labeling of Retail Containers of Charcoal; Proposed Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.[1]

SUMMARY: Under the Federal Hazardous Substances Act, the Commission is proposing a rule to change the required labeling for retail containers of charcoal intended for cooking or heating. The labeling addresses the carbon monoxide hazard associated with burning charcoal in confined spaces. The proposed amendments, which include a pictogram, are intended to make the label more noticeable and more easily read and understood and to increase the label's ability to motivate consumers to avoid burning charcoal in homes, tents, or vehicles.

DATES: Comments on the proposal should be submitted no later than October 24, 1995.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Sharon White, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0468 ext. 1286.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutes and Regulations. Since its creation in 1973, the Consumer Product Safety Commission (''Commission'' or ''CPSC'') has administered the Federal Hazardous Substances Act (''FHSA''), 15 U.S.C. 1261–1278. Prior to that time, the FHSA was administered by the Food and Drug Administration (''FDA'').

The FHSA defines ''hazardous substance'' as including any ''substance or mixture of substances which (i) is toxic * * * if [it] may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use. * * *'' Section 2(f)(1)(A) of the FHSA, 15 U.S.C. 1261(f)(1)(A). Hazardous substances are misbranded if they do not bear the labeling required by section 2(p)(1) of the FHSA, 15 U.S.C. 1261(p)(1).

Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue regulations establishing variations from or additions to the labeling required under section 2(p)(1) if the Commission finds that the requirements of section 2(p)(1) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance. Rulemaking under section 3(b) is conducted under the informal notice and comment procedure provided in 5 U.S.C. 553.

In addition, section 3(a) of the FHSA, 15 U.S.C. 1262(a), authorizes the Commission to issue regulations declaring products to be hazardous substances if the Commission finds they meet the definition of hazardous substance in section 2(f)(1)(A). The purpose of this authority is to avoid or resolve uncertainty as to the application of the FHSA. 15 U.S.C. 1262(a).

In 1970, the FDA proposed a rule under sections 3(a) and 3(b) of the FHSA to require a statement on packages of charcoal intended for household use that would warn of the potentially deadly hazard of carbon monoxide (''CO'') poisoning from breathing the combustion products of charcoal when used in a confined area. 35 FR 13887 (September 2, 1970). In 1971, FDA issued a final rule that is currently codified in 16 CFR 1500.14(b)(6). That section requires the following borderlined label on containers of charcoal for retail sale and intended for cooking or heating:

BILLING CODE 6355–01–P

[1] The Commission voted 2–1 to propose this rule. Chairman Ann Brown and Commissioner Thomas H. Moore voted for the proposal; Commissioner Mary Sheila Gall voted against the proposal. Separate statements by each commissioner are available from the Office of the Secretary.

WARNING: Do Not Use for Indoor Heating or Cooking Unless Ventilation is Provided for Exhausting Fumes to Outside. Toxic Fumes May Accumulate and Cause Death.

BILLING CODE 6355–01–C

The current label is required to appear on both the front and back panels of bags of charcoal, in the upper 25% of the panels, at least 2 inches below the seam, at least 1 inch above any other reading material or design element of the bag, and in specified minimum type sizes.

2. Nature of the hazard. [6, Tab B][2] CO is produced by the incomplete combustion of fuels such as charcoal. The level of CO produced from burning charcoal may accumulate to toxic levels in closed environments. CO is a colorless, odorless gas which reduces the blood's ability to carry oxygen by reacting with hemoglobin to form carboxyhemoglobin (COHb). The symptoms of CO poisoning range from nausea to death. Each individual's reaction to CO exposure varies, depending on several factors including age, health status, or smoking habits. Due to the nonspecific nature of the symptoms that can be associated with CO poisoning (e.g., fatigue, lethargy, dizziness, or diarrhea), misdiagnoses of both acute and chronic CO poisonings can be expected. Additionally, CO is odorless, which may contribute to individuals frequently being unaware of their exposure to CO.

3. Petition from Barbara Mauk. On October 12, 1990, CPSC received a letter from Barbara Mauk petitioning the Commission to amend the current label on bags of charcoal. [1] In this letter, the petitioner cited an incident that occurred when she and her son were camping 1 year previously. After grilling food outside her camper and before retiring for the night, she brought the grill inside the camper. She assumed that the charcoal was extinguished, even though the grill was still warm. Two days after the incident, she and her son were found. Her son died from CO poisoning, and she was hospitalized and treated for CO poisoning. Ms. Mauk stated that she knew that CO has no odor and can be lethal, but she did not know that charcoal can produce CO. She stated that had she known this, she would have taken the precaution of making sure the coals were out or left the grill outside. The petition (No. HP 91–1) requested that the current label on bags of charcoal be revised to state that: (1) Charcoal produces CO (and if applicable, other lethal or toxic fumes), (2) charcoal produces fumes until the charcoal is extinguished, and (3) CO has no odor.

On December 22, 1992, the Commission voted to grant the petition as to the statements that charcoal produces CO and that CO has no odor, and deny the petition as to adding statements that charcoal produces these fumes until the charcoal is completely extinguished. [2] The Commission also voted to improve the label's precautionary language, specifically with reference to ventilation.

4. Subsequent actions by the Commission. In 1993, the Commission's staff became aware of data that indicated that a pictogram is needed to communicate the safety message to those who do not read English. [6, Tab E(1)] Further, an article, discussed below in section B of this notice, reported that 73% of the victims in one area over an 11-year period were members of ethnic minorities, many of whom were Hispanic or Asian immigrants who could not speak English. [3]

On April 22, 1994, the staff met with industry to present staff's recommendations for revising the warning label on packages of charcoal. Industry indicated a willingness to revise the warning label, but raised a number of concerns. [6, Tab F] These concerns were considered in developing the label.

On June 1, 1994, the Commission directed the staff to prepare, for the Commission's consideration, a draft notice of proposed rulemaking (''NPR'') to amend the labeling currently required for packages of charcoal to warn of the dangers of burning charcoal indoors. The proposed label would: (1) Clarify the dangers of burning charcoal indoors; (2) remove the possibly misleading statement that implies that charcoal can be safely burned indoors with ''ventilation;'' (3) add color to the signal word panel; (4) include a pictogram, if feasible; (5) include a Spanish safety message if a pictogram is not feasible; and (6) include additional features recommended by the staff to make the safety messages more conspicuous and understandable.

On April 13, 1995, staff met with industry again to present the results of the pictogram tests and staff's current recommendations for revising the warning label on packages of charcoal. [6, Tab F] The changes to the recommended warning label reflected, for the most part, concerns industry representatives raised at the April 1994 meeting. After considering the additional comments received at the April 1995 meeting, the staff recommended a label to the Commission. The staff also described possible variations of that label for the Commission's consideration. The label the Commission decided to propose, and the reasons the various features of the label were chosen, are described in section D of this notice.

B. CO Poisoning Incidents

The Commission's Division of Hazard Analysis examined available data concerning CO poisoning incidents. [6, Tab C] That Division estimates that there was an average of about 26 non-fire CO-related deaths per year associated with charcoal grills and hibachis from 1986 to 1991.[3] (The annual estimate of non-fire CO deaths fluctuates, with no discernible pattern.) Data from the CPSC's National Electronic Injury Surveillance System (''NEISS'') indicate that there was an average of about 400 emergency-room-treated injuries involving charcoal grills and hibachis annually from 1980 to 1993.

Hazard Analysis staff reviewed 103 incident reports involving CO deaths and injuries associated with charcoal for the years 1986 to 1994. There were 164 victims reported in the incidents: 111 died and 53 recovered. Most of the victims were males who were exposed to CO while sleeping. Eighty-seven of the 164 victims were members of ethnic minorities, and slightly more than half of these were reported to be Hispanic. The data provide some indication that many of the Hispanic victims, particularly those who were foreign-born, were of a low socioeconomic status. The English language literacy for most of these victims was not reported. However, three reports indicated that a Spanish translator was present during the investigation. Information about the victims' awareness of the potential for CO poisoning from burning charcoal indoors was not available for most of the incidents.

More than half (65) of the incidents involved a charcoal barbecue grill or hibachi. Information on the safety labeling on the packages of the charcoal involved in most of these incidents was not available. However, the Commission's Office of Compliance has no record of opening a case based on a violation of the charcoal special labeling

[2] Numbers in brackets indicate the number of a document as listed in the List of Relevant Documents in Appendix 1 to this notice.

[3] As noted above, CO is produced as a product of incomplete combustion. The term ''non-fire'' means that the CO was not produced as the result of a conflagration or other unintended open flame.

requirement, and there is no reason to believe that the packages of charcoal involved in these incidents did not bear labels warning of the CO hazard.

Half of the incidents occurred when the victims burned charcoal in their homes or in areas being used for living purposes. There were 52 cases where it was reported that victims used charcoal to keep warm. In nine incidents, there was an indication of an attempt to provide some ventilation. Most of the incidents occurred during the fall and winter.

An article prepared by Hampson, N.B. et al. (1994), reports that 79 victims were treated for CO poisoning resulting from burning charcoal indoors in the Seattle, Washington, area between October 1982 and October 1993. [3] Fifty-eight (73%) of the victims were members of ethnic minorities, many of whom were Hispanic or Asian immigrants who could not speak English. There was no information available, however, documenting whether they could read English.

C. The Pictogram

The CPSC staff, a charcoal manufacturer, and Dr. Neil B. Hampson of Washington State each developed a pictogram. [6, Tab E(2)] Each pictogram was tested according to ANSI Z535.3, American National Standard for Criteria for Safety Symbols.

The pictogram developed by CPSC staff obtained the highest percentage of correct responses in the first round of testing. This pictogram achieved 56% correct responses, with 4% critical confusion. (Critical confusion is where the message conveyed contradicts the intended message.)

Based on findings from the test results, the three pictograms were revised and presented for a second round of testing. The revised pictogram developed by a charcoal manufacturer obtained the highest percentage of correct responses in this round of testing (74% correct responses, with no critical confusion).

The ANSI Z535.3 test method recommends that, to be selected, a pictogram should obtain 85% correct responses with a maximum of 5% critical confusion. In this case, however, the staff believes that, for the following reasons, it is appropriate to use the pictogram that scored highest [6, Tab E(1)]:

1. Stringent criteria were used to select the subjects, which helps to assure a rigorous test. Fifty subjects were tested (50% Hispanics who did not read English and were at or below the poverty level, and 50% people who do read English and were below the median income). No middle or upper income people were included in the test.

2. Had the pictogram been tested in context (i.e., on bags of charcoal), the 85% level might have been attained.

3. The 74% correct responses for the pictogram chosen does not differ greatly from the 85% ANSI criterion. Furthermore, the tested pictogram had no critical confusion in the responses, while ANSI allows 5%. This is significant because a person who believed that the pictogram meant that it was appropriate to burn charcoal indoors could be more likely to do so.

Staff previously recommended that if the pictograms did not adequately communicate the safety message, the safety message should be presented in both English and Spanish. As discussed above, the Commission concludes that the pictogram does adequately convey the message. However, according to the contractor who administered the test, a clinical psychologist who regularly works with low-income Hispanics, many in the target population are unable to read either English or Spanish. [6, Tab E(2)] Therefore, a safety message in Spanish instead of a pictogram would not necessarily reach those Hispanics who do not read English.

Additionally, while the largest single group of minority victims identified in the CPSC data is Hispanic, others, most notably Asian immigrants who do not read English or Spanish, would not be informed by a label in Spanish.

Accordingly, a pictogram appears to be the most effective measure to address those who do not read English. The Commission does not believe that a label that combines both English and Spanish warning statements with a pictogram is warranted. For the reasons discussed above, the Commission cannot conclude in this case that such a label would be significantly more effective than one combining a pictogram and a warning statement in English. Furthermore, including both languages and a pictogram on the label would increase the size of the label, with potential adverse economic effects on the industry. See the discussion of label size below in section E of this notice.

A charcoal grill manufacturer objected to some features in the depiction of the grill in the pictograms that were tested. [7] The manufacturer stated that the depiction of a grill with three legs and a semi-ellipsoid shaped kettle, as in the tested pictogram, violated registered trademarks of its brand of grill. The Commission's Human Factors staff concluded that a pictogram that depicted a grill with four legs and a shallower shape of the kettle would communicate the idea of a charcoal grill at least as well as the tested version. Accordingly, the proposed pictogram differs from the most successful one tested in those regards. The fact that the Commission is proposing these changes from the tested pictogram should not be interpreted as an opinion on the validity of the relevant trademarks or as a waiver of any right in the nature of ''fair use'' that the Government may have to use a trademark without authorization.

During the development of the proposed label, the Commission's staff discussed with industry whether the pictogram should appear above or to the side of the warning statement. Industry noted that allowing the pictogram to be beside the warning statement would reduce the vertical height of the revised label. As discussed below, increasing the minimum allowed height of the label can have an adverse economic effect on producers of bags for charcoal. The Commission's staff also concluded that placing the pictogram to the left of the warning statement will make the label more appealing visually and thus more effective. Accordingly, the Commission is proposing to require the pictogram to be adjacent to, and to the left of, the warning statement.

D. The Warning Statement

The Commission proposes that the revised label should explicitly state: ''CARBON MONOXIDE HAZARD—Burning charcoal indoors can kill you. It gives off carbon monoxide, which has no odor. NEVER burn charcoal inside homes, vehicles, or tents.'' The rationale for the revisions to the label is discussed briefly below [6, Tab E(1)].

Statement of Hazard. To motivate consumers to comply with the label, it is important that the label explicitly state the hazard, i.e., that burning charcoal indoors can kill due to the production of CO. Thus, the label states ''CARBON MONOXIDE HAZARD.''

An early draft of the label used the term ''CARBON MONOXIDE POISONING.'' This was changed because industry claimed that the term could be interpreted by some consumers as inaccurately warning that charcoal cooking could poison food.

Statement of Consequences. The phrase ''cause death'' in the current label should be replaced by the more personal phrase ''can kill you.'' Research indicates that personalizing the warning will make it difficult for users to conclude that the warning is not directed at them and, therefore, that it is not important to comply with the warning.

Statement of How to Avoid Hazard. The label should clearly state the action to be taken or avoided. Thus, the label should be revised to state ''NEVER burn charcoal inside homes, vehicles, or tents.'' The current statement, ''Do Not Use for Indoor Heating or Cooking Unless Ventilation Is Provided for Exhausting Fumes to Outside,'' may be dangerously misleading. It may incorrectly convey to the user that it is safe to burn charcoal indoors if some sort of ventilation is provided. Even if charcoal is burned in areas where there is some ventilation, CO may not be reduced to safe levels.

An industry member stated that advising users that they should never burn charcoal indoors was unnecessary and too stringent. He cited the example of restaurants, and some home owners, that cook indoors with charcoal under a hood with ducting and a high-capacity exhaust fan to expel the CO to the outside. He also expressed the fear that changing the wording of the label would make users think there had been some change in the product that made it more dangerous.

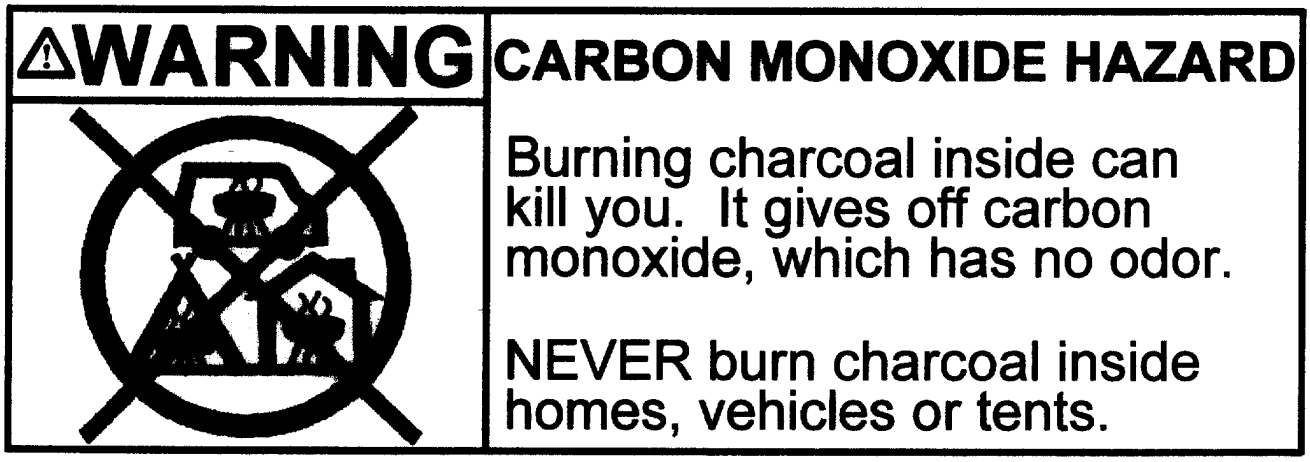
The Commission does not believe that persons who have gone to the trouble and expense of installing a powered exhaust hood specifically so they can cook indoors with charcoal are going to think the label applies to them (except to the extent they should be sure the exhaust system is operating properly). The Commission concludes that including language on the label to indicate that charcoal can be burned indoors if such an exhaust system is used would dilute the primary safety message and confuse consumers who did not have such a system.

Marketers of charcoal may provide additional explanatory material about the statement to never use charcoal in homes. And, the label statement could even be asterisked or footnoted to draw attention to such material. However, such explanatory material must not negate the content of the warning for persons without such specialized equipment. To do so would violate the prohibition against deceptive disclaimers at 16 CFR 1500.122. In addition, packages of charcoal that are supplied only to restaurants and other commercial establishments are not required to comply with the FHSA, and are not subject to the requirements for either the current label or the proposed revised label.

This industry member also stated that it was safe to burn charcoal in a fireplace that has a chimney with an open flue. However, the Commission has information indicating that burning charcoal in a fireplace may not create a chimney draft sufficient to exhaust CO to the outside. [11] Accordingly, based on the presently available information, the Commission concludes that including a statement that charcoal can be burned in fireplaces would constitute a prohibited deceptive disclaimer. The Commission seeks comment on this issue, including specific data on whether, and under what conditions, charcoal can safely be burned in a fireplace.

Recommended Revised Label. For the reasons stated above, and elsewhere in this notice, the Commission proposes that the label currently required on packages of charcoal be revised to appear and read as follows:

BILLING CODE 6355–01–P



BILLING CODE 6355–01–C

E. Other Features of the Label

Conspicuousness of the Safety Messages. The Commission's Human Factors staff concluded that, as a matter of optimum label design, it would be desirable for the label to be consistent with the ANSI Z535.4, American National Standard for Product Safety Signs and Labels. That standard specifies that the signal word ''WARNING'' should be written in black lettering surrounded by an orange background. The signal word should also be placed at the top of the label and be preceded by the hazard alert symbol.

Under the ANSI standard for safety labels, the label should also be surrounded by a black borderline, which in turn should be surrounded by a white border to make the label more distinct. The Human Factors staff also recommended that the lettering of the warning statement be in black on a white background, to maximize readability. In addition, they recommended that the ''X'' on the pictogram be red, to achieve the maximum visual impact and warning effect.

The charcoal-bag industry, however, pointed out that this optimum label would require the bag to have a minimum of four colors: red, orange, black, and white. The industry stated that many of the printing presses for charcoal bags have the capability of printing only six colors, and that presses capable of printing more than six colors are very expensive. Generally, most bags already have at least six colors, and the presently-used colors often do not include one or more of the colors that would be required by the ''optimum'' label described above. Industry members stated that customers may consider the color scheme of a product to be part of its brand identification. For the reasons given by the industry, the Commission is proposing to not use the

colors specified by ANSI and described above. Thus, the proposed label will not change the present requirement that the label shall be in a ''color sharply contrasting with the background'' and that the borderline shall be ''heavy.'' Examples of color combinations that the Commission's staff considers to be sharply contrasting, in order of expected visual efficiency, are: black on white; black on yellow; white on black; dark blue on white; white on dark red, green, or brown; black on orange; dark green and red on white; white on dark gray; and black on light gray. [9] Examples of colors that may not be considered sharply contrasting are: black on dark blue or dark green, dark red on light red, light red on reflective silver, and white on light gray or tan. See 16 CFR 1500.121(d).

Processing Safety Messages. To make the label easier to read and understand, the Commission proposes that the messages be presented concisely and in an outline form, be presented in a horizontal format, be left-justified with a ragged right margin, be in upper and lower case lettering, be in the appropriate point-type, have an acceptable strokewidth-to-height ratio, and have sufficient space between lines of text. [6, Tab E(1)]

Type Size. The Commission's Human Factors staff determined that in order for the label's type to be legible and conspicuous, 18-point type would be required. [6, Tab E(1)] Thus, the proposed revision specifies 18-point type (3/16 inches) as the minimum allowable type size for the safety messages. The signal word shall be in at least 27-point type (9/32 inches).

Label Size. When the minimum specified type sizes are laid out in the configuration specified in the proposed revised label, the label is 2 inches high. Accordingly, this is the minimum allowable height of the label, and this size is suitable for the smallest-size bags of charcoal presently marketed (2.5 lb.).

An industry member raised the question of whether the label can or should be proportionately larger for larger-size bags. The Commission recommends that larger bags use larger labels to the extent feasible. The Commission solicits comment on whether it should, in the final rule, require that labels be proportionately larger for larger bags. If the Commission requires proportionately larger labels, it could require larger type sizes for specified ranges of the area of the front and back panels of the package. Comment is solicited on the appropriate parameters and on the potential economic effects of larger labels on larger bags.

The proposed revised label is taller than the currently required label. The current label is required to be at least 2 inches from the top seam. In order to maintain this required distance, the bottom edge of a taller label would have to be lower on the bag. This could interfere with existing graphics, which would then have to be redesigned. This could require additional modifications to printing plates and increase the cost of the proposed label revision, without providing any identifiable safety benefit. Therefore, the Commission is proposing to change the minimum allowable distance from the top seam to the label from 2 inches to 1 inch. This would allow the taller label to be printed without affecting other printing lower on the bag.

The Commission proposes to retain the current requirements that the label must be on both the front and back panels of the bag and in the upper 25% of the panels.

F. Economic and Product Information [6, Tab G]

Charcoal is a solid carbon material made from wood subjected to extremely high temperature. It is available in lump, briquet and powdered forms. To produce charcoal briquets, charcoal is ground, mixed with other ingredients, and pressed into pillow shapes. Lump and briquet charcoal is used as a fuel in cooking and in specialized scientific, industrial and horticultural applications. Recreational cooking consumes approximately 80–90% of charcoal production. Specialized uses account for the remainder of charcoal consumption.

Nearly 800,000 tons of charcoal briquets were sold in 1992. Charcoal briquet sales doubled between 1967 and 1977, were relatively flat during the 1980's, and have shown a slight rise since 1991. The popularity of gas grills may explain the flattening of sales during the 1980's. Charcoal briquet sales account for approximately 80–90% of the annual production of charcoal. Imports comprise less than 1% of the domestic sales of charcoal.

Supermarkets and hardware, discount, drug, and garden supply stores sell charcoal to consumers in a variety of types and packages. Three major types of charcoal briquets are available. One is the standard briquet. Another is the ''instant-light'' briquet, which is impregnated with a flammable substance. The third is a ''flavor additive'' briquet which is produced with an aromatic wood such as hickory or mesquite. Standard briquets generally are sold in multi-walled (multi-layered) 5, 10, 20 and 40-pound paper bags. The instant-light briquets are available in similar 2½, 4, 5, 8, and 15-pound bags. Briquets are also available in single use, wax impregnated, ''light-the-bag'' packages. Lump charcoal, which is pure charcoal, is marketed as a natural product and is available in packaging similar to briquets. Charcoal also may be sold in other sizes of bags or in corrugated boxes depending upon marketing considerations. Based on an informal study of the Washington, D.C. area market, the retail price of charcoal ranges from approximately $.25 to $.75 per pound depending on package size, although the retail price of some specialty charcoal may be higher.

Approximately 10 companies manufacture lump and briquet charcoal in the United States. Several companies import charcoal. According to industry representatives, the top five domestic charcoal manufacturers control an estimated 90–95% of the market, with the leading company controlling approximately 50%. Manufacturers provide lump charcoal and charcoal briquets under an estimated 150 different brand names, most of which are private or ''store'' brands. Relatively few are nationally or regionally marketed brands.

An estimated 47.5 million households own charcoal grills. Based on a survey conducted by the Barbecue Industry Association, the number of ''barbecuing events'' more than doubled over a 10-year period, with an estimated 2.3 billion occurrences in 1991. [5] Based on ownership and usage data obtained through this survey, an estimated 800 million of these barbecuing events used charcoal. These data indicate that there was an estimated average of 17 charcoal barbecuing events per year per household that owned a charcoal grill. It is also estimated that, on average, each of these households uses the equivalent of 3.4 10-pound bags of charcoal per year.

There are approximately 26 deaths and 400 CO-related emergency room-treated injuries associated with the use of charcoal each year. Thus, there was approximately one death for every 1.8 million households owning charcoal grills and one CO injury for every 118,750 households owning charcoal grills. Additionally, there were an estimated 160 million bags of charcoal briquets sold in 1992. Thus, there was approximately one death for every 6.2 million charcoal briquet bags (0.16 deaths per million bags) and one CO injury for every 0.4 million bags (2.5 injuries per million bags).

The Commission estimates that changing the labeling requirements for packages of charcoal has the potential

for substantial benefits to society. Based on the CPSC's injury cost model, the average annual societal cost of an injury from charcoal-related CO poisoning is approximately $10,000. The annual societal cost of these injuries is approximately $4 million, given the estimated 400 such injuries per year. Additionally, there are an estimated 26 deaths per year from charcoal-related CO poisonings. Assuming a statistical value of life of $5 million, these injuries and deaths cost society about $134 million annually. The avoidance of these injuries and deaths represents the maximum potential benefits to society.

The costs to industry of revising the warning label include one-time, start-up expenses and continuous, ongoing expenses. Start-up expenses include the cost of new printing equipment and printing plates, artwork, and negatives. Ongoing expenses relate to the additional color requirements of the recommended warning label.

If the Commission were to mandate the ''optimum'' warning label described above, which includes the additional color requirements, industry representatives have indicated that aggregate start-up expenses for the label could amount to as much as $6 million. Further, the ongoing costs for added colors may be around $4 million per year. If the start-up expenses are amortized over a 5-year period, the costs of the revisions to the warning label may amount to about $5.2 million annually.

However, the Commission is proposing to ease the requirements for the placement of the label on bags of charcoal and to not mandate additional colors. The costs of the proposed revision are estimated to be no more than $1 million in start-up expenses. Easing the recommended color requirements will allow continued use of current printing equipment. Since the revised labeling rule is proposed to have an effective date 12 to 18 months after publication of the final rule, no additional burden to industry should result. This time should allow firms to use up existing inventories of printed bags. If any preprinted bags remain unfilled at that time, the costs of not using these bags and of discarding them are not expected to be significant.

Benefits to society from the new label would exceed costs at 1% effectiveness if, as proposed, additional colors are not required and the current label position requirements are eased. If the label was required to contain the four specified colors and the position requirements of the label were not eased, as in the ''optimum'' label described above, the label would need to be about 4% effective in order for benefits to exceed costs.

G. Effective Date

The rule applies only to filled containers of charcoal. Marketers of charcoal, however, have indicated that it is not unusual to have an inventory of printed bags that would take 1 or 2 years to use up. These marketers would prefer that the revised requirement relate to the date the bag or other container was printed, so that all existing inventories could be used. This approach would be impractical for the Commission to enforce, however, since the staff would have to determine not only when the bag of charcoal was filled, but when the bag was printed. Accordingly, the Commission has decided to specify that the rule applies to all containers of subject charcoal that are filled on or after the effective date.

In order to address the marketers' concern about inventories, however, the Commission proposes that the revised rule will not become effective until sufficient time has passed for the industry to use up most of its current inventory of printed bags. The Commission estimates that this will occur on a date that is 12 to 18 months after the issuance of a final rule. This will provide time to revise the plates needed to print the new label, revise any other plates that may be affected on the bag, conduct consumer acceptance tests if needed, print new bags, and incorporate the new bags into production. It will also provide time for existing inventories of printed bags to be depleted. Of course, manufacturers who order additional printing of bags between now and the effective date of the rule should limit the quantities ordered so that large numbers of bags will not have to be discarded or stickered with the new label. Accordingly, the Commission proposes that the effective date will be at least 12, but not more than 18, months after any final rule is published.

Although there can be no guarantee that any final rule will be the same as the proposed rule, some manufacturers may wish to voluntarily use the revised label before the effective date of a final rule. For such firms, the Commission will, until further notice published in the **Federal Register**, consider labels complying with the proposal as complying with the current requirements of 16 CFR 1500.14(b)(6), as well as with any revised requirements of this section, provided that such labels are brought into full compliance with the final rule as supplies are exhausted.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic analysis examined the potential effects of the proposed rule on small entities. [6, Tab G] Businesses affected by label-change costs may include charcoal manufacturers (approximately 10 firms), bag suppliers, and firms that own a charcoal brand name (proprietary or private label brands). Industry representatives predict that the bulk of the costs of developing new labels will fall initially on the charcoal manufacturers. As noted above, these costs may include those associated with the development or purchase of new printing plates, printing equipment, artwork, and negatives.

Several private label manufacturers have indicated that they will be disproportionately affected by a label change. These firms package charcoal under a large number of brand names, which may require hundreds of plate changes. According to information currently available, the number of small firms that may be disproportionately affected by a label change is not substantial, as only a few small firms may fall into this category. Easing of the margin and color requirements, as proposed, will substantially reduce these firms' costs. These effects may be further mitigated if the firms are able to pass costs through to their customers or if their plates are near the end of their service life. Costs for other small firms are not expected to be significant, due to the relatively small number of brands and sizes handled by such firms.

The rule should not require small firms to buy new printing presses. Manufacturers would be given enough time to use up existing supplies of printed bags. Bags filled with charcoal

before the effective date are not subject to the revised requirements.

Accordingly, for the reasons given above, the Commission preliminarily certifies that the proposed rule, if issued, would not have significant economic effects on a substantial number of small entities. However, the Commission solicits comments concerning the potential effects of the proposed rule on small firms.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule to revise the warning labels for packages of charcoal. Preliminary analysis of the potential impact of this proposed rule indicates that it would have no significant effects on the environment if the effective date of a rule enables the firms to deplete existing stocks of filled and empty bags. (Some firms have indicated that, depending on the time of the year, they may have as much as a 2-year supply of filled and empty bags.) As previously noted, bags filled before the effective date would not be affected by the proposed rule. Even if some old inventory of bags remains and cannot be restickered, the environmental consequences would not be major.

Therefore, because the proposed rule would have no significant impact on the environment, neither an environmental assessment nor an environmental impact statement is required.

J. Conclusion

For the reasons discussed above, the Commission preliminarily concludes that the labeling required by section 2(p)(1) of the FHSA for packages of charcoal is not adequate for the protection of the public health and safety, in view of the special hazard of CO poisoning presented by using charcoal in a confined area. The Commission preliminarily finds that the additional label requirements in the proposed revised label are necessary for the protection of the public health and safety and proposes to issue such requirements under the authority of section 3(b) of the FHSA, 15 U.S.C. 1262(b).

Effective Date

The Commission proposes to make the final rule effective on a date that is 12 to 18 months after it is published in the **Federal Register**, as to charcoal intended for cooking or heating that is placed in containers for retail sale on or after that date.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law Enforcement, Toys.

For the reasons given above, the Commission proposes to amend 16 CFR part 1500 as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.14 is amended by revising the borderlined label statement in paragraph (b)(6)(i) and paragraph (b)(6)(ii) as follows:

§ 1500.14 Substances requiring special labeling under section 3(b) of the act.

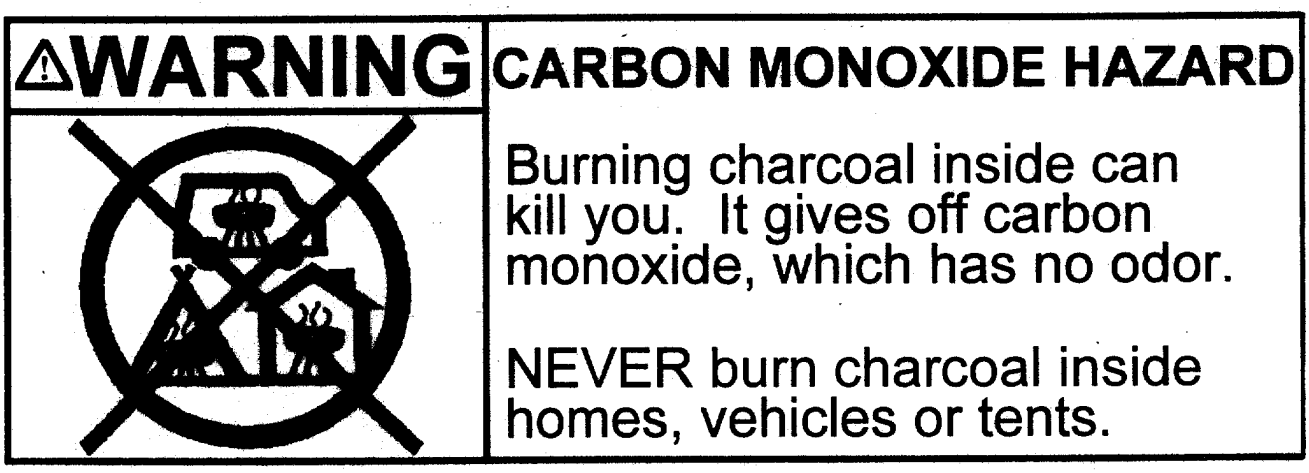
* * * * *

(b) * * *

(6) * * *

(i) * * *

BILLING CODE 6355–01–P



BILLING CODE 6355–01–C

(ii) For bags of charcoal, the label specified in paragraph (b)(6)(i) of this section shall appear within a heavy borderline in a color sharply contrasting to that of the background, on both the front and back panels in the upper 25 percent of the panels of the bag, at least 1 inch below the seam and at least 1 inch above any reading material or design elements. The signal word ''WARNING'' shall be in capital letters in at least 27-point (7.14 mm, 9⁄32 inch) type. The remaining text of the warning statement shall be in at least 18-point (4.763 mm, 3⁄16 inch) type. The lettering shall have a strokewidth-to-height ratio of from 1:6 to 1:8, and the spacing between the bottom of the letters of one line of the statement of consequences and the statement of how to avoid the hazard and the top of the letter of the next line of that statement shall be about one-fourth of the height of the type size. The label shall be at least 50.8 mm (2 inches) high. The label's lettering and pictogram shall have the size relation to each other and to the remainder of the label as shown in paragraph (b)(6)(i) of this section.

* * * * *

Dated: August 1, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of Relevant Documents

(**Note:** This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Petition HP 91–1 from Barbara Mauk.

2. Letter to Barbara Mauk from Sadye E. Dunn, CPSC, January 28, 1993.

3. Hampson, N.B. et al., *JAMA* (January 5, 1994).

4. Cost information from industry.

a. The Clorox Company (Kingsford), P.O. Box 493, Pleasanton, CA 94566.

b. King and Spalding, representing Royal Oak Enterprises, Inc., 1730 Pennsylvania Ave. N.W., Washington, D.C. 20006.

c. Hickory Specialties, Inc., P.O. Box 1669, Brentwood, TN 37024.

5. Barbecue Industry Association survey. Barbecue Industry Association, 710 East Ogden, Suite 113, Naperville, IL 60563.

6. Briefing package dated July 6, 1995, with Tabs A–H.

TAB A—Background Information on Charcoal Labeling in Briefing Package memo dated May 18, 1994 accompanied by FDA's Notices of Proposed and Final Rulemaking dated September 2, 1970, and August 11, 1971, and Petition for Amending Labeling Requirements for Charcoal Intended for Household Use, dated October 12, 1990.

TAB B—Memorandum from Laureen E. Burton of Directorate for Health Sciences to Sharon R. White, entitled ''Carbon Monoxide Toxicity Review for the Charcoal Labeling Project,'' dated March 8, 1994.

TAB C Memorandum from Leonard Schachter Directorate for Epidemiology, Division of Hazard Analysis to Sharon R. White, entitled ''Charcoal Labeling Project,'' dated December 12, 1994.

TAB D—Memorandum from Charles M. Jacobson of Office of Compliance and Enforcement to Susan E. Womble, entitled ''Compliance Experience with Current FHSA Labeling Requirements for Charcoal Briquets,'' dated April 30, 1992.

TAB E—1. Memorandum from Sharon R. White of Directorate for Engineering Sciences, Division of Human Factors to The File entitled, ''Proposed Revisions to Labeling Requirements for Packages of Charcoal'' dated June 15, 1995.

2. Memorandum from George Sweet of Directorate for Engineering Sciences, Division of Human Factors to Sharon R. White entitled, ''Pictogram Testing for Warning Labels on Charcoal Bags,'' dated June 12, 1995.

TAB F—Logs of Industry Meetings on (1) April 22, 1994, and (2) April 13, 1995.

TAB G—Memorandum from Mary F. Donaldson of Directorate of Economic Analysis to Sharon R. White, entitled ''Economic Analysis of a Revision to Charcoal Labeling,'' dated June 22, 1995.

TAB H—Draft **Federal Register** Notice—Notice of Proposed Rulemaking.

7. Letter from James C. Stephen, President, Weber-Stephen Products Co., to Sharon R. White, CPSC, May 11, 1995.

8. Letter from Harleigh Ewell, CPSC, to James C. Stephen, President, Weber-Stephen Products Co., June 29, 1994.

9. Woodson, W.; Tillman, B.; and Tillman, P., 1992.

10. ANSI Z535.3–1991, American National Standard for Criteria for Safety Symbols.

11. Perry, E., and Neily, M. (1985). Burning Charcoal Briquettes in a Fireplace. U.S. Consumer Product Safety Commission, Washington, DC.

12. Letter from Leonard S. Gryn, Executive Vice President, Weber-Stephen Products Co., to Harleigh Ewell, CPSC, July 5, 1995.

[FR Doc. 95–19357 Filed 8–9–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–26–95]

RIN 1545–AT55

Treatment of Underwriters in Section 351 and Section 721 Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes rules for transfers of cash to a corporation or a partnership. The proposed regulations will affect taxpayers in transactions intended to qualify under section 351 and section 721 when there is an offering of stock or partnership interests through an underwriter. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 8, 1995. Requests to speak at the public hearing scheduled for Wednesday, January 17, 1996, at 10 a.m., with outlines of oral comments, must be received by Wednesday, December 27, 1995.

ADDRESSES: Send submissions: CC:DOM:CORP:T:R (CO–26–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO–26–95), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation under section 351(a), Susan T. Edlavitch, (202) 622–7750; concerning the proposed regulation under section 721(a), Brian J. O'Connor, (202) 622–3060; concerning submissions and the hearing, Mike Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 351(a) provides that no gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in the corporation and immediately after the exchange the person or persons are in control (as defined in section 368(c)) of the corporation.

Section 721(a) provides that no gain or loss is recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Rev. Rul. 78–294, 1978–2 C.B. 141, involves the incorporation of an existing sole proprietorship by an individual to raise capital through a public offering. The individual sought the assistance of an underwriter. In accordance with the plan, the individual organized a new corporation, which had capital stock of 1,000 authorized but unissued shares.

Situation 1 describes a transaction that was considered to fall within the general definition of a ''best efforts'' underwriting. Pursuant to an agreement among the individual, the new corporation, and the underwriter, the individual transferred all the business property to the new corporation in exchange for 500 shares of stock. The underwriter agreed to use its best efforts as an agent of the corporation to sell the 500 unissued shares to the general public at $200 per share. The underwriter succeeded in selling the stock within two weeks of the initial offering with no change in the terms of the offering.

Situation 2 describes a transaction that was considered to fall within the general definition of a ''firm commitment'' underwriting. Pursuant to an agreement among the individual, the new corporation, and the underwriter, the individual transferred all the business property to the new corporation in exchange for 500 shares of stock, and the underwriter transferred $100,000 in cash to the new corporation in exchange for the remaining 500 shares. At the time of the underwriter's purchase, the underwriter had not entered into a binding contract to dispose of its stock in the new corporation. However, the underwriter intended to sell its 500 shares, but, if unsuccessful, was required to retain them. Following the exchanges, the underwriter sold its 500 shares of stock in the new corporation to the general public within two weeks of the initial offering. The individual retained the